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IN THE

Supreme Court of the United States

October Term, 1963

No. 619

JOSEPH ALEX COTA,

Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent.

Real Parties in Interest:

JOSEPH ALEX COTA vs. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; CLARK KERR, as President of the University of California; L. DALE COFFMAN; RICHARD C. MAXWELL, as Dean of the School of Law of The University of California at Los Angeles.

PETITION FOR A WRIT OF CERTIORARI.

JOSEPH ALEX COTA,
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Petitioner in Propria Persona.

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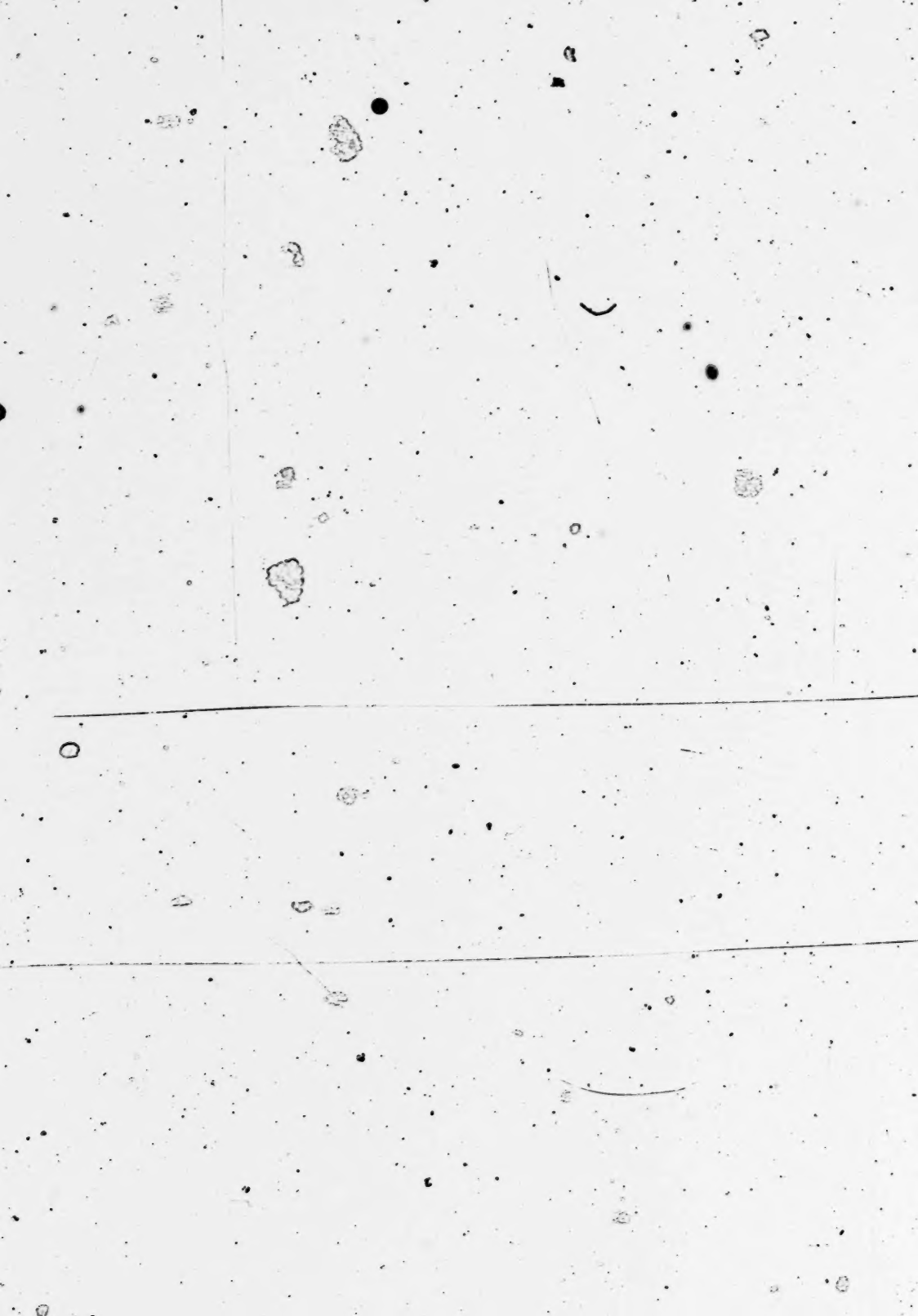

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PETITION FOR A WRIT OF CERTIORARI.

Joseph Alex Cota, petitioner, prays that a Writ of Certiorari Issue to Review the Judgment of the Supreme Court of the State of California entered in the above entitled case on August 20, 1963 (DCA 27560) denying petitioner a hearing.

How a Federal Question Is Presented.

In the present action brought in the Superior Court of the County of Los Angeles (No. 820153, filed June 13, 1963), petitioner did distinctly and positively assert a violation of his rights under the United States Constitution, Amendments I and XIV. Such an assertion was also made in petitions to the Second District Court of Appeal and the Supreme Court of California.

It was clearly stated in petitions to these judicial bodies that former Dean L. Dale Coffman, a respondent herein, threatened that if petitioner did not conform to Mr. Coffman's political and social views, petitioner would not be permitted to return to law school the next year. That petitioner refused to so conform because such unreasonable demands upon him were, and are, in violation of petitioner's rights under the United States Constitution, Amendments I and XIV.

Question Presented.

Is the judgment of the Supreme Court of the State of California of August 20, 1963 which is based upon respondents contention that *res judicata* bars this present action to be allowed to stand where there has never been a hearing on the merits in petitioner's case and where such a decision leaves petitioner with an unjustly and maliciously maligned reputation and deprives him of the opportunity to continue his education?

Statement of the Case.

Recent developments in this matter make it necessary to present this petition before the Supreme Court of the United States.

One John R. Lechner, director of a so-called Americanism educational league, made derogatory statements

about petitioner, Joseph Alex Cota, over radio station KNX in 1961 and stated, among other things, that former U.C.L.A. Law School Dean L. Dale Coffman, a respondent herein, had shown him, John R. Lechner, petitioner's examination paper. Petitioner brought an action for invasion of privacy against Mr. Lechner, who was never connected with the university in any way, as well as against Mr. Coffman (a member of Mr. Lechner's so-called Americanism Educational league) and the Board of Regents of the University of California. Depositions taken in this action (Superior Court No. 791653) are a clear indication of why the petitioner must once again pray for justice in the Supreme Court of the United States. Because of the concerted effort on the part of respondents to destroy petitioner's reputation and credibility, it is necessary to quote the following excerpts from said depositions:

Deposition of L. Dale Coffman, July 31, 1962 and August 8, 1962, page 6, line 24, to page 7, line 5.

"Q: Now, during the course of the period '51-52 when Mr. Cota was in the tort class, did you and Mr. Cota engage in any discussions concerning either Mr. Cota's political beliefs or your political beliefs? A. I'm sure I did not know what Mr. Cota's political beliefs were at that time or what they are.

Q. I didn't ask you what they were. A. I taught Torts, which is not politics.

Q. My only question is, if at any time you engaged in a discussion with Mr. Cota on the subject of politics? A. No, I never talked politics in my Law School class."

Compare with *Answer of Respondent to Amended Petition for Writ of Mandate* filed February 8, 1954, Superior Court No. 619033 (p. 2, lines 28-30):

"Denies that during said school year or at any other time petitioner and respondent had disagreements, serious or otherwise, based upon their differing political or social points of view; . . ."

Deposition of Mr. Lawrence M. Lieberman; U.C.L.A. Law School graduate. October 19, 1962; Superior Court No. 791053 (p. 5, lines 6-19):

"Q. Do you ever recall Mr. Cota and Dean Coffman engaging in any conversation in the Torts class? A. Yes.

Q. Do you recall their engaging in any conversations dealing with political or social topics? A. Yes.

Mr. Jackson: All right.

Q. Do you recall what the nature of the conversation was? Well, first of all, what was the subject of the conversation? A. Well, there were several conversations that I recall. This, of course, was eleven years ago.

Mr. Jackson: Yes, I realize that.

A. One conversation dealt with McCarthyism. . . ."

Deposition of James T. McMillan, U.C.L.A. Law School graduate, October 4, 1962 (p. 6, lines 7-23; Superior Court No. 791053):

"Q. Did you hear them discuss any issues that did not relate to the subject matter that was being taught, which would be Torts? A. I can recall one instance. Whether you'd define it as a dis-

cussion or not—I qualify my remembrance by the fact that this was eleven years ago, about 1951. The only one that I really specifically recall—and this is to the best of my recollection—is some remark by Dean Coffman in class, and I don't recall how the remark originated or what caused it to be made. The statement was something to the extent that he—could anyone mention the man, or was there anyone at whom Senator McCarthy had pointed a finger whom in some way or another hadn't ultimately had the charge at least substantiated to a somewhat lesser or greater degree. Now, that's really a paraphrase of the statement, but the general idea was McCarthy's accusations were in some respect legitimate."

In September 1951, petitioner was admitted as a student in good standing to the School of Law at the University of California at Los Angeles (U.C.L.A.) and pursued his studies for the school year ending June, 1952. During said school year, petitioner and former dean of the law school, L. Dale Coffman, had serious disagreements based upon their differing political and social views. Former Dean Coffman, also professor of Torts, threatened petitioner that if he did not conform to Mr. Coffman's political and social views, favoring McCarthyism and racial segregation, petitioner would not be permitted to return to law school the next year. Petitioner refused to so conform because such unreasonable demands upon him were and are in violation of petitioner's rights under the United States Constitution, Amendments I and IV, and in violation of the Constitution of the State of California, Article IX, Section 9, which provides that the University of

California shall be entirely independent of all political or sectarian influence.

That because petitioner did not conform to said wrongful and unreasonable demands, respondent gave petitioner an unsatisfactory grade (three-tenths of a point below permissive status) which petitioner has good cause to question. Petitioner was not permitted to return to the school of law the following year. Because of the ill-will, malice, and threats respondent Coffman directed toward petitioner, the latter sought an explanation of the grading on his examination. Respondent Coffman did at all times refuse to explain the grading of said paper and acted dishonestly and with bad faith. Respondent Coffman was put on immediate notice that petitioner's examination paper was held in question, but in spite of said notice respondent stated he destroyed this evidence.

Petitioner sought a review of his grievance by higher authority in the University, including the regents and the president thereof. The University authorities not only refused to make a complete investigation and call witnesses, but proceeded to malign the petitioner's reputation in a vicious and malicious manner as shown by the following excerpt from a letter written by former U.C.L.A. Chancellor R. B. Allen to United States Congressman Chet Holifield who had made inquiries of the University in behalf of petitioner:

". . . as for the rather serious allegations made by Mr. Cota against Dean E. Dale Coffman, I have no basis for believing that the charges are deliberately falsified, but they are not substantiated by other evidence. Certainly were they true they would call for drastic action. Experience with Mr.

> Cota, however, indicates that he is a seriously disturbed personality and that perhaps his statements should be taken with charity and a grain of salt. . . ." (Letter dated May 26, 1953.)

Petitioner must emphasize that no witnesses were ever called nor a full investigation ever made by the university as recent events have clearly shown.

Petitioner sought judicial review of his case in action No. 619033 in September 1953, but the Superior Court of Los Angeles County ruled that the "Court cannot interfere with rules established by the Regents of the University." (See Order Sustaining Demurrer Denying Writ, February 23, 1954.) A hearing on the merits was never allowed. Furthermore, the respondent did again viciously and maliciously malign petitioner's reputation by stating in the "Answer of Respondent to Amended Petition for Writ of Mandate" on page 13 (filed February 8, 1954, No. 619033):

> "In the present judgment of respondent, as Dean of the School of Law, based upon the information which respondent has bearing on the physical, mental and character qualifications of petitioner, and without reference to his scholastic deficiencies, petitioner could not be recommended by respondent for admission to the State Bar of California."

Without ever having had his case fully investigated or a fair hearing on the merits in Court, the petitioner was thusly destroyed in reputation and good name. Appeals were taken by petitioner to higher courts including the Supreme Court of the United States in October Term 1953 but were denied without opinion.

Petitioner next endeavored by all manner of means to obtain the substantiation called for in former U.C.L.A. Chancellor R. B. Allen's letter (see above) which promised "drastic action". Petitioner sought the aid of his fellow citizens by way of signed petitions requesting that his case be fully investigated. Said signed petitions were not only confiscated from petitioner's hands by University (U.C.L.A.) police, but petitioner was incarcerated by said police in February, 1960 and made to serve a period of ten days in jail in January, 1961. Petitioner was charged with vagrancy under California Penal Code Section 647.7 (Municipal Criminal No. 110845) after peaceably trying to demonstrate for a full investigation of his case. When petitioner sought to subpoena witnesses from the University to establish the purpose for his being on campus and thereby show he was not a vagrant, the court quashed said subpoenas. Appeals in this vagrancy matter were taken all the way up to the Supreme Court of the United States (October term 1960) but were to no avail.

After petitioner was made to serve a very humiliating ten days in jail, new developments occurred in this matter leading up to this present petition. One John R. Lechner made statements over Radio Station KNX in 1961 to the effect that former Dean L. Dale Coffman, respondent herein, had shown him, John R. Lechner, petitioner's examination paper. Petitioner brought an action for invasion of privacy against Mr. Lechner, Mr. Coffman and the Board of Regents of the University of California (Superior Court No. 770153). Depositions taken in this action not only substantiate petitioner's position as called for

by former Chancellor R. B. Allen, but also show that the University was guilty of an abuse of discretion in failing to investigate petitioner's grievance.

Petitioner again presented his case before all the University authorities (the Law School, President Clark Kerr, and the Regents) with the substantiation called for and included the depositions taken in the above mentioned action in 1962 for invasion of privacy. The University went back on its word and petitioner was again arbitrarily and wrongfully denied readmission to the U.C.L.A. School of Law.

Petitioner next brought an action for Writ of Mandate on June 13, 1963 to petition for readmission to the U.C.L.A. School of Law for the coming semester. (Superior Court No. 820153). The Superior Court denied the application for an Order for Issuance of an Alternative Writ of Mandate, and refused issuance of an Alternative Writ of Mandate on the grounds that the action is precluded by *res judicata* (see Order, July 16, 1963, Dept. 65 of the Superior Court).

Petitioner then took this matter to the District Court of Appeal of the State of California, Second Appellate District, No. 27340, by means of a petition for Writ of Mandate praying that the Superior Court be directed to hear petitioner's case on the merits. This petition was denied on July 25, 1963. A similar petition to the Supreme Court of the State of California was also denied on August 20, 1963. Petitioner asserted a violation of his rights as a citizen under the United States Constitution throughout all these appeals and proceedings (including the Superior Court).

Reasons for Granting Writ.

Petitioner respectfully submits that the courts below have erroneously disallowed the current action No. 820153 for mandamus because his case has never been heard on the merits and new matter substantiating petitioner's position warrants a full hearing to enable a full development of petitioner's cause. As was stated above, the Superior Court in action No. 619033 refused to take jurisdiction over the matter by ruling that it could not interfere with rules established by the Regents of the University. This ruling as to lack of jurisdiction is not only clearly erroneous for it fails to acknowledge judicial review in cases where there is an abuse of discretion, but also does not bar the present petition on the grounds that it constitutes *res judicata*.

3 Witkin, Procedure, Section 54, page 1939.

"No difficulty is encountered with a judgment entered after sustaining a special demurrer for formal defects such as uncertainty, incapacity to sue, misjoinder of parties or causes, etc., *or for lack of jurisdiction*. *It is not res judicata*." (Emphasis added.)

See:

Goddard v. Security Title I. & G. Co. (1939), 14 Cal. 2d 47, 52, 92 P. 2d 804;

Johnston v. Ota (1941), 43 Cal. App. 2d 94, 97, 110 P. 2d 507;

Rest. Judgments, Secs. 49, 50.

In the *Goddard* case, *supra*, a Federal District Court sustained a general demurrer and the judgment against the plaintiff was affirmed by the Court of Appeals. In the new action the record was examined, and it ap-

peared from the minute order of the trial judge and the opinion of the Appellate Court that the fatal defect was in the form of the action." Held.

"the judgment was based upon formal matters of pleading and concluded nothing save that the complaint, in the form in which it was then presented, did not entitle plaintiff to go on trial on the merits. Such a judgment is clearly not on the merits, and under the rules set forth above, is not *res judicata*." (44 Cal. 2d 538.)

Keidatz v. Albany, (1952), 39 Cal. 2d 826, 249 P. 2d 264.

State Board of Equalization v. Superior Court, (1943), 20 Cal. 2d 467, 471, 127 P. 2d 43; 18 So. Cal. L. Rev. 287.

Funeral Directors Assn. v. Board of Funeral Directors, (1943), 22 Cal. 2d 104, 107, 136 P. 2d 785.

Financial Indem. Co. v. Superior Court, (1955), 45 Cal. 2d 395, 289 P. 2d 233.

"where a court disposes of matter before it on ground that it has no jurisdiction and thereby precludes decision on the merits, mandamus may issue to compel the court to decide issues on the merits."

Petitioner respectfully submits that should the present ruling be allowed to stand a grave injustice will never be corrected. A full and fair hearing will clearly establish that there was malice and ill will on the part of respondents toward petitioner exceeding that of the petitioner in the case of *Ex rel. Nelson v. Lincoln Medical College*, 41 Neb. 583. By the wrongful and malicious actions of respondents, petitioner has been

made to lose his veteran's educational benefits, has had his good name and reputation very viciously besmirched, been grievously abused and humiliated, and has been deprived of the opportunity of continuing his studies at the School of Law—all without ever having had his case fully investigated or his grievance given a full hearing. Furthermore, the respondents had petitioner take a loyalty oath not required of any other student. Because of the nature of this matter, petitioner must state in the most positive terms possible for any American citizen that had Mr. Coffman been a communist demanding conformance to his views rather than an advocate of McCarthyism, the petitioner would have resisted such demands with all the strength he could muster and for as many years as have now passed.

The court has jurisdiction and mandamus is the proper remedy where there is ill-will and arbitrary conduct on the part of the University amounting to an abuse of discretion.

California Code Civil Proc. 1094.5 . . . Abuse of discretion is established if the respondent has not proceeded in the manner required by law. . . .

State ex rel. Nelson v. Lincoln Medical College, 81 Neb. 533 (this case very closely parallels that of petitioner herein). Respondents made the argument that "each professor had the autocratic right to fix the grade on his examination and that no one had the right to interfere therewith." 81 Neb. 540.

The court stated:

> "If respondents are right, a student may pay the college fees, all expense, and devote his entire energies for four years of study in respondent col-

lege, and, if upon final examination she should incur the ill will of one professor, that man could prevent the student from graduating or receiving his degree . . . this is neither the law of the land or of the institution" (*Ibid*).

In *Estate v. Royer*, 123 Cal. 614, 624, the Supreme Court stated:

". . . The university, while a governmental institution and an instrumentality of the state, is not clothed with the sovereignty of the state and is not the sovereign. As we understand the rule, it is only the sovereign that is exempt from the operation of statutes affecting its interests or rights. We think the statute applies to the university as a public corporation."

Anthony v. Syracuse University, 223 N. Y. 796, 804, 809:

"Arbitrary action is never the result of the exercise of discretion, and the university has no arbitrary but rather only discretionary power to dismiss a student."

See also The Use of Mandamus to Compel Educational Institutions to Confer Degrees, by Harker, 20 Yale Law Journal 341.

State v. Knox, 158 Fla. 165;

Valentine v. Independent School District, 187 Iowa 555;

Yeargin v. Maschke, 90 Wash. 249;

Dental Examiners v. People ex rel. Cooper, 123 Ill. 227.

That where improper political or sectarian influences on the part of university personnel result in unfair, unreasonable and unjust demands upon a student, as was the case with petitioner herein, the court has jurisdiction in the matter based on the Constitution of the State of California, Article IX, Section 9 and the United States Constitution, Amendments I, XIV.

Conclusion.

That respondent Coffman spoke falsely in denying he and petitioner had a disagreement on the basis of political views can now be demonstrated because of more recent events. So long as petitioner was not permitted to call witnesses and the University refused to fully investigate this matter, petitioner's case was severely handicapped. The passage of time, like petitioner's imprisonment for vagrancy, acted to sap strength from petitioner's cause and, therefore, was to the benefit of respondents. However, there is sufficient substantiation at present to show that the respondents acted with malice and in bad faith. There is also substantial corroboration to show that respondent Coffman was not telling the truth when he stated he had explained the grading of petitioner's examination to petitioner. Respondents, therefore, should not be permitted to take refuge behind statements that they destroyed the evidence; namely, petitioner's examination paper (especially since they were on notice it was in question). Furthermore, if petitioner were permitted to more fully develop his case it could be amply demonstrated that because of respondent Coffman's abusive actions in the school of law, petitioner was made to suffer much abuse and humiliation. There are, therefore, ample grounds to grant this petition.

That there is no plain, speedy and adequate remedy available to petitioner that will cause his readmission to the School of Law at the University of California at Los Angeles or enable him to obtain a full hearing on the merits of his grievance in the Superior Court.

Wherefore, petitioner prays he be granted a hearing so that the order in the court below be reversed and the cause be permitted to go to trial on the merits or alternatively that a Writ of Mandamus be issued ordering the reinstatement of petitioner as a student in good standing at the next regular semester of the School of Law at the University of California at Los Angeles, and that petitioner be granted such other costs and relief as the court may deem just and proper.

Respectfully submitted,

JOSEPH ALEX COTA
Petitioner in Propria Persona.

Dated: October 17, 1963.